IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1469 of 1993

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT STATE ROAD TRANSPORT CORPORATION - Appellant(s)
Versus
BARIA GAJRABEN TRIKAMBHAI & 9 - Defendant(s)

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Appearance :

MR HEMANT S SHAH for Appellant(s) : 1,
MR BS PATEL for Defendant(s) : 1,3 - 4,6 - 9.
MRS RANJAN B PATEL for Defendant(s) : 1,
NOTICE SERVED for Defendant(s) : 2, 10,
DELETED for Defendant(s) : 5,

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 13/09/2006

ORAL JUDGMENT

1. The Gujarat State Road Transport Corporation has filed this appeal under Section 173 of the Motor Vehicles Act [hereinafter referred to as the “Act”] to challenge

the judgment and award made by the Motor Accident Claims Tribunal [Special] at Vadodara in MACP No. 452/1986 dated 23rd February, 1993. Respondents no. 1 to 9 are the heirs of deceased Trikambhai who lost his life in a vehicular accident which took place on 24th July, 1985. The deceased on that day around 10:00 a.m., was travelling in the bus owned by the appellant. The said vehicle met with an accident, as a result of which the deceased received injuries. He was admitted in the hospital, but after about 14 days, he expired. Respondents no. 1 to 9 therefore, approached the Tribunal under the provisions of the Act for claiming compensation for the death of Trikambhai. It was their say that on the date of the incident, the driver of the offending vehicle who is respondent no. 10 in this appeal, drove the vehicle in a rash and negligent manner. As a result of that, there was collision with one truck and thereafter respondent no. 10 completely lost control of the vehicle and the bus ultimately landed in a pit, causing injuries to the inmates. As stated above Trikambhai also received serious injuries and after 14 days, he expired.

2. According to the respondents/claimants the deceased was a carpenter and was earning Rs.600=00 per month. On that basis, in the claim petition Rs.1 lakh is

claimed by way of compensation.

3. On the basis of the evidence that was led before the Tribunal, it came to the conclusion that respondent no. 10 drove the vehicle rashly and negligently. Thereafter the Tribunal, keeping various aspects in view, awarded Rs.85,600=00 to the claimants along with interest at the rate of 15% per annum commencing from the date of the filing of the application till the realization. In this appeal, the said award is challenged.

4. Mr. Hemant Shah learned advocate for the appellant has submitted that the Tribunal erred in determining the correct amount of compensation *inasmuch* as it, while assessing loss of dependency benefit did not make any deduction on account of personal expenditure of the deceased. He has further submitted that the deceased was aged 70 years and the multiplier that has been applied is of 8 years. In his submission it ought to have been of 5 years, keeping in view the schedule. He has further submitted that even for expectation of life the Tribunal had awarded the amount of Rs.15,000=00, which is on higher side. Lastly, he has submitted that the interest which is awarded at the rate of 15% per annum is required to be reduced, since it is excessive. As against

that, Mr. Chirag B. Patel learned advocate appearing for respondents no. 1 to 9, has submitted that the deceased was able-bodied person and his father had expired at the age of 105 years. Therefore, even after 70 years the deceased could have lived life up to 80 to 85 years at least. He has further submitted that the loss of dependency benefit assessed by the Tribunal is just and proper and no interference is required. Same argument is also advanced in respect of the interest awarded by the Tribunal.

5. Having perused the record and proceedings of the case and having carefully considered the submissions made by the learned advocates, it clearly appears that there is no dispute that the deceased lost his life in a vehicular accident. It is also not in dispute that he was aged 70 years. It is also not disputed in appeal by Mr. Shah to the income earned by the deceased by doing carpentry. The disputed items are as stated above i.e., the multiplier applied by the Tribunal; no deduction made of the amount spent on deceased; the amount awarded as conventional amount and the rate of interest.

6. The first submission of Mr. Shah with regard to loss of dependency benefit is concerned, the Tribunal has

assessed the income of the deceased at Rs.600=00 per month. Obviously, he would not have diverted the entire income for the maintenance of the family and would have spent some amount on himself. Reasonably, such amount could be at Rs.150=00 per month. The Tribunal has, therefore, erred in awarding Rs.600=00 per month under this head. So far as the question with regard to 15 years multiplier applied by the Tribunal is concerned, it is on record that the father of the deceased lived the life over 100 years. It is also in evidence that the deceased was able-bodied person and even at the age of 70 years, he was doing the work of carpentry to generate income. In view of the state of health of the deceased as also the tendency of the longevity in the family, I do not think that the Tribunal has committed any error in applying 8 years multiplier. Therefore, on that count, the submission of Mr. Shah is required to be rejected.

7. The third submission of Mr. Shah with regard to the rate of interest is concerned, it also deserves acceptance. This is the accident which took place on 24th July, 1985 and the award is made on 23rd February, 1993. At the relevant time the prevailing rate of interest was 12%. Hence, the rate of interest awarded by the Tribunal is required to be altered from 15% per annum to 12% per

annum. Lastly, according to Mr. Shah the amount awarded under the head expectation of life is excessive and it is required to be reduced to Rs.10,000=00. Considering the fact that conventional amount at the relevant was usually assessed at Rs.10,000=00, the submission of Mr. Shah is required to be accepted and the amount is required to be reduced to Rs.10,000=00. So far as the compensation assessed under other heads is concerned, there is no need to interfere with the same. The Tribunal is, therefore, directed to calculate the amount that may have now become refundable and refund the same to the appellant.

8. With the aforesaid, modifications, this appeal is partly allowed with no order as to costs.

R & P to be re-transmitted to the Tribunal forthwith.

[Akshay H. Mehta, J.]

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